NOTES OF CASES.

New Trial—Prejudice of Juror When Stockholder of Corporation Plaintiff.—In Memphis St. R'y *v.* Illinois Cent. RR., in the U. S. Circuit Court of Appeals, Sixth Circuit (May, 1917, 242 Fed. 617), it appeared that in an action by a railway company the jurors on their examination were asked collectively whether they were directly or indirectly interested with plaintiff or had any contracts with it that would cause them to incline favorably toward it, and all remained silent, indicating that they answered in the negative. One juror in fact owned one share of stock in the railway company, but such ownership had passed from his mind. He was the foreman of the jury and the last to vote, and made on attempt to influence his fellow jurors, and did not make his views known before voting. At the same term he had sat in several cases against the railway company and had voted for verdicts against it. If the verdict had been appropriated among the stockholders his share would have been slightly more than one-third of a cent. It was held that prejudice was not shown and his ownership of stock was not cause for granting a new trial, especially as a juror whose examination is so conducted as not to bring his attention to a disqualifying circumstances or cause him to refresh his memory touching it is not required to know or surmise that something more is intended than what is clearly expressed by the question actually asked.

Bankruptcy—Preference to Creditor—Set-Off of Indebtedness by Deposits.—In Fourth National Bank of Wichita, Kansas *v.* Smith, in the United States Circuit Court of Appeals, Eighth Circuit (December, 1916, 240 Fed. 19), it was held that where a bank, to which a depositor was indebted, after knowledge of the depositor's insolvency, but before a petition in bankruptcy was filed, set off against the indebtedness the amount of deposits made by the depositor in the usual course of business, the transaction was valid as a "setoff," under Bankruptcy Act, July 1, 1898 (c. 541, sec. 68a, 30 Stat. 565, Comp. St. 1913, sec. 9652), and was not a "preference" under Bankruptcy Act (sec. 60a, Comp. St., 1913, sec. 9644), since the making of the deposits merely created a relation of debtor and creditor between the bank and the depositor, and the application thereof to the indebtedness involved no transfer of property.

The Circuit Court of Appeals cites and especially relies upon the decisions of the Supreme Court of the United States in New York County Bank *v.* Massay (192 U. S. 138), Studley *v.* Bank (229 U. S. 523), and Continental Trust Co. *v.* Chicago Title Co. (229 U. S. 435), and, after having summarized them, remarks:

"In our opinion, these three foregoing cases are decisive of the

case at bar. In the present case items of deposit from September 2 to October 31 were received in the usual course of business. There is no evidence that a deposit was built up for the benefit of the bank, and there is no claim made to that effect. Checks were drawn against the deposit account, and the amount of the deposit account varied during the above period from $18,000 to $5,000.

"The cases of Mechanics' & Metals National Bank *v.* Ernst (231 U. S. 60, 34 Sup. Ct. 22, 58 L. Ed. 121), National City Bank *v.* Hotchkiss (231 U. S. 50, 34 Sup. Ct. 20, 58 L. Ed. 115) and In re National Lumber Co. (212 Fed. 928, 129 C. C. A. 448) are cited by counsel for the trustee. But in all these cases the deposits in question were not received in the usual course of business, but were 'built up' or deposited under unusual circumstances, for the express purpose of giving a preference to the bank. The so-called deposits were deposits merely in name, but in fact were payments.

"In the case at bar the referee found:

"'In the present matter there is no circumstance proven which would justify the conclusion that the bankrupt had been accumulating funds on deposit for the purpose of liquidating the bank's debt. On the contrary, every circumstance indicates that the amount to the credit of the bankrupt was a balance resulting from transactions in the usual, ordinary course of business.'

"This distinction between deposits made in the usual course of business, even by an insolvent depositor, and deposits made for the purpose of giving a preference to a bank has been recently emphasized by this court in German-American State Bank *v.* Larimer (235 Fed. 501, ——, C. C. A. ——), the right of setoff being expressly recognized in the former instance but not in the latter."

Contracts—Validity—Agreement to "Stay Away" as Consideration.—The decision of the Supreme Court of Tennessee in Wallace *v.* McPherson (October, 1917, 197 S. W. 565) applies axiomatic principles of law to a rather unusual state of facts. A serious family quarrel is disclosed and a contract was made by a brother (party of the second part) and his wife that they would leave the City of Memphis and Shelby County, Tennessee, "and will not return to the same so long as any one of the parties of the first part (his sisters, brother and brother-in-law) has his or her permanent home in said city." The party of the second part further agreed that he would not visit the parties of the first part save on express invitation, and that he would in no way, either personally, or by letter or messages, or otherwise, harrass, annoy or in any manner communicate with the parties of the first part of either of them. As a consideration for this agreement the parties of the first part agreed to pay the party of the second part and his wife a stated sum monthly during their lives and the life of the survivor, and after death to their son until his majority. It was, however, expressly provided that if